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7 **BEFORE THE**
BOARD OF REGISTERED NURSING
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. **2010-604**

11 **MARION LOUISE WARNER**
12 **P.O. Box 604**
Atascadero, CA 93423

A C C U S A T I O N

13 **Registered Nurse License No. RN 615639**

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about March 20, 2003, the Board of Registered Nursing (Board) issued
22 Registered Nurse License No. 615639 to Marion Louise Warner (Respondent). The Registered
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and
24 expired on February 28, 2009, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 7. Section 2762 states:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
4 chapter to do any of the following:

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6 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
7 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
8 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
9 himself or herself, any other person, or the public or to the extent that such use impairs his or her
10 ability to conduct with safety to the public the practice authorized by his or her license.

11 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
12 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
13 or the possession of, or falsification of a record pertaining to, the substances described in
14 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
15 thereof."

16 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not
17 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
18 to render a decision imposing discipline on the license.

19 **REGULATORY PROVISIONS**

20 9. California Code of Regulations, title 16, section 1444, states, in pertinent part:

21 "A conviction or act shall be considered to be substantially related to the qualifications,
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
24 safety, or welfare."

25 **COST RECOVERY**

26 10. Section 125.3 provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Substantially-Related Crime)**

5 11. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and
6 (f) and section 490, as defined in California Code of Regulations, title 16, section 1444, in that on
7 or about March 23, 2009, after pleading *nolo contendere*, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
9 having a 0.08% or higher blood alcohol], in the criminal proceeding entitled *The People of the*
10 *State of California v. Marion Louise Warner* (Super. Ct. San Luis Obispo County, 2009, No.
11 M000429943). Respondent was placed on probation for three years, and fined. The
12 circumstances surrounding the conviction are that on or about February 20, 2009, a California
13 Highway Patrol Officer was called to the scene of a solo vehicle collision involving Respondent.
14 Respondent hit a fence while driving and having 0.08% and more, by weight, of alcohol in her
15 blood. At the scene, Respondent was observed to to have bloodshot eyes, slurred speech, and had
16 an odor of an alcoholic beverage coming from her breath. When asked if Respondent had been
17 drinking, Respondent stated, "Good grief, I've been drinking all day." Respondent went on to
18 admit that she had drank, "a quart of Vodka." When explaining the next Field Sobriety Test to
19 Respondent, Respondent stated, "Oh do we really need to do this? I know my blood alcohol is
20 going to be really high." More specifically, Respondent was given the preliminary alcohol
21 screening device (PAS DEVICE), and provided two breath samples which were .306% and
22 .311% BAC. During the booking procedure, Respondent submitted to a breath test with results of
23 .23% and .23%.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Dangerous Use of Alcohol)**

26 12. Respondent is subject to disciplinary action under section 2762, subdivisions (b) and
27 (c), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or
28 injurious to herself, and the public. Respondent drove a vehicle, while having 0.08% and more,

1 by weight, of alcohol in her blood. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraph 11, though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Conviction Involving the Consumption of Alcohol)**

5 13. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and
6 (f), as defined in section 2762, subdivision (c), in that on or about March 23, 2009, Respondent
7 was convicted of a crime involving the consumption of alcohol. Complainant refers to, and by
8 this reference incorporates, the allegations set forth above in paragraph 11, as though set forth
9 fully.

10 **PRAYER**


11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board issue a decision:

13 1. Revoking or suspending Registered Nurse License No. 615639, issued to Marion
14 Louise Warner;

15 2. Ordering Marion Louise Warner to pay the Board the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3; and

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 5/25/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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25 accusation.rtf
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